IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 2373 of 2003(C)

CRA.724/2002 of ADDL.SESSIONS COURT, PARAVUR
CC.496/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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REVN. PETITIONER:

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1. M/S.FIVE STAR RUBBER INDUSTRIES PVT.LTD, XL/4216,ST.ALBERT'S SCHOOL LANE, ERNAKULAM, KOCHI REP. BY ITS MANAGING DIRECTOR, A.M.SADHIQ.

2. A.M.SADHIQ, MANAGING DIRECTOR, M/S/FIVE STAR RUBBER INDUSTRIES PVT.LTD., XL/4216,ST.ALBERTS SCHOOL LANE, ERNAKULAM,KOCHI.

3. A.M.SALAM, DIRECTOR, M/S.FIVE STAR RUBBER INDUSTRIES PVT.LTD.,XL/4216.ST.ALBERTS SCHOOL LANE, ERNAKULAM,KOCHI.

BY ADV. SRI.T.O.XAVIER

RESPONDENTS:

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1. ASMA, W/O.HYDROSE, PROPRIETOR, M/S/UNITED FUELS, EDAPALLYTOLL GATE,ERNAKULAM

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.N.NEELAKANDHAN NAMBOODIRI
SRI.P.S.NARAYANA RAJA
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, ALONG WITH CRRP NO. 2376 OF 2003 CRRP NO. 2377 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.Nos.2373/2003, 2376/2003 & 2377/2003 (C)

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Dated this the 27th day of September, 2007

O R D E R

The revision petitioners are the accused in C.C.Nos.496/1998, 498/1998 and 497/1998 of the court of the Judicial Magistrate of the First Class-II, Aluva, with respect to the offence under Section 138 of the Negotiable Instruments Act. The revision petition i.e., Crl.R.P. No. 2373/2003 is with respect to C.C.No.496/1998; Crl.R.P. No.2376/2003 is with respect to C.C.No.498/1998 and; Crl.R.P.No.2377/2003 is with respect to C.C.No.497/1998 respectively.

2. In all the cases the allegation is that towards discharge of liability for purchasing diesel for the first accused company, the impugned cheques were issued and the same when presented got dishonoured for want of funds in the account of the accused. The first accused company stands convicted and sentenced to pay a compensation of Rs.1,00,000/- and the second and third accused, the Managing Director and Director, respectively, who are the brothers, are sentenced to undergo simple imprisonment for six months in all

the three cases. PW.1, the power of attorney holder and the husband of the complainant and, PW.2 the Bank Manager of the bank in which the accused are having account to which the cheques were drawn, were examined and the documents produced; Exts.P1 to P12 in C.C.No.496/1998; Exts.P1 to P11 in C.C.No.497/1998 and; Exts.P1 to P11 in C.C.No.498/1998. When the cheques were dishonoured lawyer notices were sent to the first accused company and the Managing Director. No reply was received nor was the amount paid. It is the contention that the second accused, the Managing Director that he has not issued the cheque. It was found during the evidence of PW.2, the Bank Manager that the signatures in the cheques are that of the third accused, and that was how the third accused was implicated subsequently. PW.2, the Bank Manager has testified that the account stood in the name of the company and accused Nos.2 and 3 were empowered to operate the account.

3. The third accused has got a case that the signature contained in the impugned cheques are not that of his and that the same is the result of forgery. He had applied for sending the cheques for

handwriting expert, which was dismissed. The matter was taken up at the High Court and this Court also dismissed the same vide Crl.R.P.Nos.801/02, 855/02 and 856/02 respectively. PW.2, the Bank Manager has asserted positively that the signatures in the cheques are that of the second accused. The signature specimen card kept in the bank was also produced. The contention of the third accused in this regard which was discarded by both the courts below, has no merits.

4. It was contended that in the absence of averments as stipulated under Section 141 N.I.Act, the third accused cannot be implicated subsequently. I find that the third accused being the signatory to the cheques cannot dispute his liability, see **Rangachari vs. Bharat Sanchar Nigam Ltd. [2007 (3) ILR (KERALA) 473 (SC)]**. The contention that the third accused cannot be implicated subsequently also has no merits in view of the decisions of this Court in **Plywood House vs.Wood Craft Products Ltd. [1993 (2) KLT 371]**; **Target Overseas Exports (P).Ltd. vs. Iqbal [2005 (2) KLT 45]**. The contention that the third accused has not been issued a separate

notice also cannot be upheld, see **Dileep Kumar Jaiswal v.Debapriya Banerjee [1992 (2) KLT 35]**. In the circumstances, I find no reason to interfere in the concurrent findings of the courts below. The conviction is confirmed.

The sentence is modified to; that accused Nos.2 and 3 are convicted and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of rupees fifty thousand each in each of the three cases to the complainant and in default to undergo simple imprisonment for three months each. The first accused is sentenced to pay a fine of rupees five thousand. The accused are granted three months' time to remit the amount of compensation. Accused Nos.2 and 3 shall appear before the Judicial Magistrate of the First Class-II, Aluva, on 03/01/2008 to receive the sentence.

The criminal revision petitions are disposed of accordingly.

K.R.UDAYABHANU,
Judge

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